



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 18, 2004

Ms. Luz E. Sandoval Walker
Assistant City Attorney
City of El Paso
2 Civic Center Plaza - 9th Floor
El Paso, Texas 79901-1196

OR2004-9824

Dear Ms. Sandoval Walker:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 213200.

The El Paso Police Department (the "department") received a request for records of calls to a certain location or any calls by a named individual from a specified location. You claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Portions of Exhibit C involve juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, the marked reports in Exhibit C are confidential pursuant to section 58.007(c) of the Family Code. You must withhold the marked information from disclosure under section 552.101 of the Government Code.

Section 552.101 also encompasses section 261.201 of the Family Code. Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Because a portion of the requested information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261, the information is within the scope of section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the marked information in Exhibit C is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Accordingly, the department must withhold the marked document from disclosure under section 552.101 of the Government Code as information made confidential by law.¹

You also contend that information in the computer-aided dispatch reports submitted as Exhibit B is excepted under section 552.101. Section 552.101 also encompasses sections 772.118, 772.218 and 772.318 of the Health and Safety Code, which make confidential the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier. *See* Open Records Decision No. 649 (1996). Section 772.118 applies to emergency communication districts for counties with a population over two million. Section 772.218 applies to emergency communication districts for counties with a population over 860,000. Section 772.318 applies to emergency communication districts for counties with a population over 20,000. Subchapter E, which applies to counties with populations over 1.5 million, does not contain a confidentiality provision regarding 9-1-1 telephone numbers and addresses. *See* Health & Safety Code §§ 772.401, *et seq.* You advise that the City of El Paso is part of an emergency communication district that was established under section 772.318. Based on your representation, we agree that the originating telephone numbers and addresses of the 9-1-1 callers that you have marked in Exhibit B are confidential under section 772.318 and must be withheld under section 552.101. We note, however, that one item of information that you marked is neither the telephone number nor originating address of a 9-1-1 caller. This information, which we have marked, is not confidential under section 772.318 and must be released.

Finally, you note that Exhibit B includes Texas motor vehicle information, the release of which is governed by section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the marked vehicle identification number, license plate number, license plate type and expiration date under section 552.130.

¹We note, however, that if the Texas Department of Family and Protective Services has created a file on this alleged abuse, the child's parent(s) may have the statutory right to review that file. *See* Fam. Code § 261.201(g); Act of June 2, 2003, 78th Leg., R.S., ch. 198, § 1.27, 2003 Tex. Gen. Laws 611, 641 ("A reference in law to the Department of Protective and Regulatory Service means the Department of Family and Protective Services.").

In summary, the marked portions of Exhibit C must be withheld in their entirety pursuant to section 552.101 in conjunction with section 58.007. The remaining information in Exhibit C must be withheld pursuant to section 552.101 in conjunction with section 261.201. The originating telephone numbers and addresses of 9-1-1 callers in Exhibit B must be withheld pursuant to section 552.101 in conjunction with section 772.318. The motor vehicle information in Exhibit B must be withheld under section 552.130. All remaining information must be released to the requestor.

You also ask this office to issue a previous determination that would authorize the department to withhold the originating address and telephone number furnished by a service provider to a 9-1-1 emergency communication district pursuant to section 772.318. We decline to do so at this time. Accordingly, this letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "L. Joseph James". The signature is written in a cursive, flowing style.

L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/seg

Ref: ID# 213200

Enc. Submitted documents

c: Ms. Sondra Paul
2431 Player Avenue
Sierra Vista, Arizona 85650
(w/o enclosures)